

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

HIGHLIGHTS PAINTING, LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 | unpaid wages
RSA 275:48 | illegal deductions

Employer: Highlights Painting, 48 Haley Dr, Campton, NH 03223

Date of Hearing: September 10, 2015

Case No. 50869

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on July 1, 2015. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on August 19, 2015. The claimant filed the Wage Claim for \$211.00 in illegal deductions and expenses to attend the hearing.

The claimant testified that he worked for the employer for six weeks. He gave his notice and the employer deducted employer costs from his final paycheck. The claimant testified that he had employer expenses deducted for four shirts in the amount of \$32.00. He also had two paint brushes deducted in the amount of \$33.00. He also said that the employer deducted \$57.00 from a fuel loan the employer had given to the claimant. The claimant also testified that he was paid for the Memorial Day holiday and because he had not worked six months, the employer said that he was paid in error and the day's pay of \$132.00 was also deducted.

The claimant testified that he did not sign any hiring agreement and that there were no policies in place that allowed for deductions from wages.

The claimant is also seeking expenses for the costs of traveling to the Wage Claim hearing.

The employer testified that there were written policies in place and that they were known to the claimant. The claimant was issued four shirts with the company's logo on each shirt. These shirts were to be turned in at the end of employment or a charge of \$8.00 per shirt was to be withheld from wages.

The employer also testified that he bought two paint brushes for the claimant in order for the claimant to do his job. The employer stated that it was clear that an employee had to have his/her own equipment.

The employer also stated that he gave the claimant \$77.00 for fuel. He believes that the claimant only used around \$20.00 of this for any work commutes and the rest was never paid back. The employer says that there is \$57.00 still due on the loan.

The employer testified that the claimant was paid for the Memorial Day holiday even though the claimant had not worked six months with the company. The employer believes that the holiday was paid in error and deducted a day's pay of \$132.00 from the claimant's last paycheck. The employer testified that a final check in the amount of \$257.50 was paid to the claimant.

FINDINGS OF FACT

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:48 I . No employer may withhold or divert any portion of an employee's wages unless:

(a) The employer is required or empowered to do so by state or federal law, including payroll taxes.

(b) The employer has a written authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee as provided in regulations issued by the commissioner, as provided in subparagraph (d) or for any of the following:

- (1) Union dues;
- (2) Health, welfare pension, and apprenticeship fund contributions;
- (3) Voluntary contributions to charities;
- (4) Housing and utilities;
- (5) Payments into savings funds held by someone other than the employer;
- (6) Voluntary rental fees for non-required clothing;
- (7) Voluntary cleaning of uniforms and non-required clothing;
- (8) The employee's use of a vehicle under RSA 261:111, III;
- (9) Medical, surgical, hospital, and other group insurance benefits without financial advantage to the employer, when the employee has given his or her written authorization and deductions are duly recorded;
- (10) Required clothing not covered by the definition of uniform;
- (11) Legal plans and identity theft plans without financial advantage to the employer when the employee has given his or her written authorization and deductions are duly recorded; and
- (12) For any purpose on which the employer and employee mutually agree that does not grant financial advantage to the employer, when the employee has given his or her written authorization and deductions are duly recorded. The withholding shall not be used to offset payments intended for purchasing items required in the performance of the employee's job in the ordinary course of the operation of the business. Nothing in this subparagraph shall prohibit a charitable organization from withholding from an employee's wages a voluntary contribution to such charitable organization.

(c) The deductions are pursuant to any rules or regulations for medical, surgical, or hospital care or service, without financial benefit to the employer and openly, clearly, and in due course recorded in the employer's books.

(d) Upon an employee's written request, an employer may deduct the following items from the employee's wages, provided that the employer shall provide a written itemized accounting of such requested deductions to the employee at least once per month:

- (1) Voluntary contributions into cafeteria plans or flexible benefit plans, or both, as authorized by section 125 or section 132 of the Internal Revenue Code.
- (2) Voluntary payments by the employee for the following:
 - (A) Child care fees by a licensed child care provider.
 - (B) Parking fees.
 - (C) Pharmaceutical items, gift shop, and cafeteria items purchased on site of a hospital by hospital employees.

(3) Voluntary installment payments of legitimate loans made by the employer to the employee as evidenced by a document that includes the following:

- (A) The time the payments will begin and end.
- (B) The amounts to be deducted.
- (C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.
- (4) Voluntary payments for the recovery of accidental overpayment of wages when the following conditions are met:
 - (A) The recovery is agreed to in writing.

(B) The deduction for the overpayment begins one pay period following the date the parties execute the written agreement.

(C) The written agreement specifies:

(i) The date the recovery of the overpayment will begin and end.

(ii) The amount to be deducted, which shall be agreed upon by the employer and the employee but which shall, in no event, be more than 20 percent of the employee's gross pay in any pay period.

(iii) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(5) Voluntary payments for the recovery of tuition for non-required educational costs paid by the employer for the employee to an educational institution when the specific deduction is authorized in writing prior to the deduction as evidenced by a document that includes the following:

(A) The time the payments will begin and end.

(B) The amounts to be deducted.

(C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(6) Voluntary payments for the employee's use of a health or fitness facility that is sponsored by the employer for the benefit of its employees and that is located within the employer's facility or workplace, or operated by a private health and fitness facility that offers discounted memberships of 50 percent or more to all employees of the employer, as evidenced by a document that includes the following:

(A) The time the payments will begin and end.

(B) The amounts to be deducted.

(C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(e) The employee requests in writing that deductions may be made for contributions to a political action committee from the employee's wages.

(f) The employer has a written request from the employee, made at the time of the original request without coercion or pressure, that authorizes the employer to deduct from the employee's final wages at the termination of employment any amount the employee may owe for voluntary payments for vacation pay, paid time off pay, earned time pay, personal time pay, annual pay, sick pay, sick dependent pay, and bereavement pay made pursuant to a written employment policy as required by RSA 275:49, III, when the payments have been requested and paid to the employee in advance of eligibility.

This part of the law clearly spells out when and how deductions can be made from wages.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is valid in part and invalid in part. The claimant has the burden to show that there are wages due and owing and he did meet part of this burden.

As an initial matter, there are not any provisions under the law to grant expenses for attending a Wage Claim hearing. Accordingly, the request for expenses associated with attending the wage claim proceeding is denied.

The law clearly states when and how deductions can be made from an employee's wages. There are laws that govern what has to be taken out of wages such as taxes and child support. These deductions are clearly governed by law and must be followed.

There is also the provision of law that allows for an employee and an employer to agree on deductions when the deductions are beneficial to the employee and authorized by the employee. These deductions would include such things as insurance coverage, special retirement deductions and the agreed upon pay back of loans.

In this case there was nothing in writing about having to pay for shirts not returned upon separation from employment. The employer could address this issue in other ways but not through an unauthorized deduction. There was no evidence that the employee allowed for these deductions.

It is also clear that the claimant needed paint brushes to do his job. If the employee did not have these work materials the employee was to ask the employer to help. Again, there is nothing in writing that said the brushes were to be returned or be deducted from wages. The employer could address this in other forums but not by an illegal deduction to wages.

There was a loan of \$77.00 for fuel costs. There was no discussion that would show that the claimant did not use \$20.00 to get fuel to do a job for the employer. However, the \$77.00 was a loan and did not have any authorization for the claimant to sign to have the balance paid back. The employer can address this in a different forum but not by deduction the balance due from wages.

Finally there is the issue of holiday pay for Memorial Day. The claimant had this day off and was paid for the day. The employer said that this was an error by the payroll company and that the employer's policy was that no holidays would be paid until after the employee worked for six months. In this case the claimant only worked six weeks and therefore should not have been paid for the day.

The Hearing Officer finds that the language in the written policy is not clear. The policy spells out the actual list of holidays and there is no language that says they cannot be used until after the six months of employment. In this case the claimant was paid for the day and now the employer is trying to get the pay back without any authorization.

The Wage Claim is valid in the amount of \$254.00. The claimant was credible in his testimony that he did not sign any authorization to have deductions taken from his wages.

DECISION AND ORDER

There is no finding for any expenses due to the claimant for attending the Wage Claim hearing.

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Hearing Officer finds that the claimant proved by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$254.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$254.00, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: October 2, 2015

TFH/kdc